January 26, 2001

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Re: USTR Section 1377 Request for Comments Concerning Compliance with Telecommunications Trade Agreements.

Dear Ms. Blue:

On behalf of AT&T Corp. ("AT&T"), I am pleased to respond to the request of the United States Trade Representative ("USTR") for comments pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. Section 3107, concerning implementation of the World Trade Organization ("WTO") Basic Telecommunications Agreement.

AT&T greatly appreciates USTR's extensive and important work during the past year to ensure that Mexico, South Africa and Peru meet their commitments in basic telecommunications and value-added network services under the WTO General Agreement on Trade in Services ("GATS"), and urges USTR to continue to take all necessary action to ensure that these countries comply with their obligations as quickly as possible.

I. MEXICO

USTR has made major efforts over the past three years to bring Mexico into compliance with its WTO commitments for basic telecommunications services and last year held WTO consultations with the Mexican government and requested the establishment of a WTO dispute settlement panel. USTR's considerable work on these issues since the last Section 1377 report has led to some significant and long overdue changes in Mexico. However, major problems remain to be resolved concerning Mexico's failure to allow fully open markets, as required by its WTO commitments, in both international and domestic services. AT&T accordingly applauds USTR for its achievements thus far on these issues but also urges USTR to continue these critical efforts to bring full and fair competition to the key Mexican telecommunications market. Mexico is the second largest U.S. international route, and U.S. carriers have invested hundreds of millions of dollars in Mexican competitive carriers. Therefore, the continuing concerns summarized below are of critical importance to the U.S. telecommunications industry and U.S. consumers.

Action taken last year: On August 17, 2000, USTR requested WTO consultations with the Mexican government on a range of issues, including: (1) Mexico's failure to provide market access for U.S. carriers to supply international calls into Mexico using a broad range of commercial arrangements; (2) Mexico's failure to ensure interconnection with dominant carrier and former monopolist Teléfonos de México ("Telmex") at any technically feasible point in Telmex's network, under non-discriminatory terms and at cost-oriented rates; and (3) Mexico's failure to maintain rules (such as "dominant carrier" regulations) that prevent Telmex from engaging in anti-competitive practices. The consultations took place in October 2000.

On November 10, 2000, USTR requested the establishment of a WTO panel to address the Government of Mexico's (1) restrictions on market access for cross-border service, (2) failure to ensure interconnection with and access to Telmex's network in accordance with Mexico's WTO commitments, and (3) failure to resolve interconnection disputes in a timely fashion. In announcing the WTO panel request, Ambassador Barshefsky stated: "We have repeatedly urged the Government of Mexico to comply with its WTO commitments. While some progress has been made, Mexico's failure to take additional actions has left us no choice but to request a WTO Panel." The USTR announcement noted that following the WTO consultations "the United States sent a letter to the Government of Mexico, acknowledging areas of progress and suggesting areas where immediate steps would be necessary to ensure Mexico's compliance with its WTO obligations." USTR further noted that "[u]nfortunately, the Government of Mexico has not responded to this letter and has declined to discuss the issues further, with senior officials stating publicly that the government was prepared to do no more."

On the same day, USTR requested additional WTO consultations on measures adopted by Mexico after the initial August 17 consultations request, including dominant carrier regulations and resolutions on the rates that Telmex charges domestic carriers for interconnection. These further consultations were held on January 16, 2001.

USTR should continue these efforts to ensure that Mexico meets its WTO obligations and, in particular, should seek resolution of the following continuing concerns:

International services: Three years after the effective date of the WTO Agreement, Mexico has still failed to implement its WTO commitments requiring the removal of market access barriers protecting Telmex's high settlement rates. The inability of U.S. carriers to obtain reasonable termination charges for calls to Mexico has caused significant harm for many years to U.S. consumers. Telmex's present settlement rate with U.S. carriers for international calls of $0.19 remains well above U.S. carriers' termination rates in competitive countries and considerably in excess of the costs Telmex incurs in terminating U.S. traffic, which are below $0.04.

In today's highly competitive global marketplace, U.S. carriers need to achieve cost-based termination arrangements in foreign countries if they are to compete effectively with the dominant foreign carriers that now have access to the U.S. market as the result of the WTO Agreement. Any prospect that the competition resulting from the WTO Agreement will bring cost-based termination arrangements in Mexico, however, is removed by the regulatory barriers maintained by the Government of Mexico. With no incentive to reduce its high settlement rates, and no competition to force these rates down -- because Mexico allows only Telmex to negotiate settlement rates and prohibits the use of alternative cross-border service arrangements -- Telmex continues to receive huge subsidy-laden settlements payments from U.S. carriers that keep U.S. calling prices artificially high.

Mexico requires U.S. carriers to terminate calls with Mexican carriers under the settlement rate system to the exclusion of alternative commercial arrangements available in many other countries for the origination and termination of switched international traffic over international private lines outside the settlement rate and proportionate return system (also known as "international simple resale" or "ISR" services). ISR services are now authorized on thirty-five U.S. international routes. Mexico's market access barriers on ISR -- specifically, its anticompetitive international traffic regulations and its failure to authorize resale services -- violate its WTO commitments and harm U.S. consumers by denying U.S. carriers the ability to use ISR to avoid Telmex's high settlement rates on calls to Mexico.

AT&T, as a supplier of cross-border services to Mexico, is also entitled under the WTO Reference Paper to interconnect these services on non-discriminatory terms and at cost-oriented rates at any technically feasible point in the network of Telmex. Mexico's fulfillment of this obligation would substantially reduce the cost of U.S.-Mexico call termination.

Domestic Regulation: Mexico has also failed to establish the level competitive playing field required by its commitments under the WTO Reference Paper, thus preventing the new carriers in Mexico, including AT&T's affiliate Alestra, from competing with Telmex on a fair and equal basis. These carriers are unfairly disadvantaged by the longstanding failure of Cofetel, the Mexican regulator, to enforce its regulations and ensure that Telmex does not abuse its market power in its dealings with its competitors, and by Cofetel's failure to ensure that Telmex's competitors may interconnect with Telmex's network at any technically feasible point, under non-discriminatory terms and at cost-oriented rates.

Although Cofetel has now attempted to address these concerns by issuing dominant carrier regulations and a resolution on lower interconnection rates for 2001, these measures are not being enforced and are also being challenged by Telmex in the Mexican courts. Because of this continuing uncertainty, AT&T's affiliate Alestra has negotiated agreements with Telmex on several issues, including interconnection arrangements for local and domestic long-distance calls. However, these agreements do not address all matters covered by the Cofetel dominant carrier and interconnection resolutions, or otherwise remove the obligation and need for Cofetel to implement and enforce requirements of the WTO Reference Paper for regulatory safeguards against anti-competitive practices and for cost-oriented, non-discriminatory and timely interconnection arrangements. Immediate action by Cofetel is in particular required in the following areas:

Enforcement of Dominant Carrier Safeguards: Cofetel has thus far taken no action to enforce the dominant carrier regulations issued on September 8, 2000, just as Cofetel has taken little enforcement action in response to the numerous complaints filed since 1997 by competitive carriers concerning anticompetitive actions by Telmex. Among the key requirements of the dominant carrier rules that Cofetel has yet to enforce, despite Telmex's non-compliance, are for: the authorization of Telmex's tariffs, to ensure that Telmex does not engage in anticompetitive below-cost pricing; the establishment of cost-based rates for billing and collection, directory services, collect services, operator services, and other services provided by Telmex to its competitors; Telmex's adherence to quality and delivery time requirements for services provided to competitors; and Telmex's compliance with accounting separation rules.

Off-net interconnection: Telmex's competitors are further disadvantaged by the above-cost domestic interconnection rates they must pay Telmex, particularly the so-called "off-net" interconnection charges that the competitive carriers pay to terminate their customers' calls in geographic areas not yet open to long-distance competition or otherwise not served by competitive carriers' long-distance networks. As described by a 1998 Ovum report, "Telmex does not offer a double transit termination charge service and new entrants are required to resell a long distance service in order to provide national termination." The interconnection resolution issued by Cofetel on October 11, 2000 recognized that off-net termination is interconnection and required the establishment of an off-net interconnection rate determined by subtracting from the lowest Telmex retail price the cost of network elements not required by competitive carriers purchasing these services.

Although the interconnection resolution requires Telmex to provide the breakdown of its lowest retail price by network functions and elements to Cofetel within ten business days of the issuance of the resolution, Telmex has not provided this information. Furthermore, Cofetel has taken no further action on the matter, although the interconnection resolution requires Cofetel in such circumstances to determine an offnet interconnection rate on the basis of the best available information. Therefore, Cofetel has still failed to establish any rate for off-net interconnection with Telmex, let alone the cost-oriented rate required by the WTO Reference Paper.

Unbundling of the local loop: Mexico has failed to provide unbundled interconnection rates for access to Telmex's network, including unbundled charges for the local loop, as required by the WTO Reference Paper. Unbundling allows other suppliers to purchase selectively only those components of the network actually needed. Pursuant to the Reference Paper, Cofetel should ensure that interconnection rates with Telmex are "sufficiently unbundled so that [competitive suppliers] need not pay for network components or facilities that [they] do [] not require for service to be provided."

Prohibition on Foreign Control: Mexico should eliminate its prohibition on foreign control of Mexican "concessionaires" (carriers authorized to own and operate basic telecommunications facilities), which is also contrary to Mexico's WTO obligations.

II. SOUTH AFRICA

AT&T wishes to highlight two concerns relating to the provision of value-added network services ("VANS") in South Africa. First, Telkom, the incumbent monopoly telecommunications operator in South Africa, continues to deny new telecommunications facilities to AT&T and many other VANS suppliers. Second, the South African regulator, the Independent Communication Authority of South Africa ("ICASA") has proposed to require that not less than 15 percent of ownership and control of a value-added networks license be held by historically disadvantaged persons.

Telecommunications Facilities for VANS: South Africa committed to open its market for VANS under the GATS. Prior to making these commitments, and following their entry into force, U.S. suppliers of VANS enjoyed reasonable and non-discriminatory access to the network of the monopoly telecommunications supplier, Telkom. In mid-1999, however, Telkom unilaterally began to deny access to the new telecommunications facilities VANS suppliers require to serve their customers, although Telkom continued to provide those facilities to its own VANS services.

South Africa's failure to ensure that U.S. VANS suppliers receive the public telecommunications facilities they require to provide VANS services in South Africa, and to prevent Telkom from discriminating against those suppliers in favor of its own competing services, is contrary to its WTO obligations, which include commitments to provide market access and national treatment for VANS services. South Africa is also required under GATS Article 8 to prevent a monopoly supplier such as Telkom from acting in a manner inconsistent with South Africa's obligations or from abusing its monopoly position when competing in the supply of a service outside the scope of its monopoly rights. Moreover, under the WTO Annex on Telecommunications, South Africa is required to ensure that U.S. VANS suppliers receive "access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions."

AT&T sought USTR's assistance to address these problems as part of its 2000 Section 1377 telecommunications review. In USTR's April 4, 2000 Section 1377 report, Ambassador Barshefsky stated that:

> South Africa's WTO commitments require the South African government to ensure that Telkom provide non-discriminatory access to and use of its facilities for the supply of competitive value added network services. . . . We will decide by June 15, whether additional action, including in the WTO, would be appropriate. In the meantime we will continue a dialogue with the South African government to resolve the problem cooperatively.

For the next three months, the U.S. government worked intensively with the South

African Government and Telkom to restore the supply of new telecommunications facilities to South African VANS suppliers. These efforts appeared to be making some progress, and so Ambassador Barshefsky, in a supplemental Section 1377 report released in June, stated that:

> We are pleased that South Africa's monopoly telecommunications supplier, Telkom, has agreed to restore access to its network for value-added services, as required by South Africa's WTO commitments. . . . Nevertheless, we remain concerned that Telkom may seek to impose WTO-inconsistent restrictions on its value-added services competitors. We urge the South African government to ensure that businesses and consumers enjoy a truly competitive value-added services market. We will continue to monitor the situation in South Africa closely to ensure that Telkom's competitors are able to offer the full range telecommunications services consistent with South Africa's WTO commitments.

It was not until August that Telkom began provisioning new telecommunications facilities to AT&T. However, Telkom has since filed a complaint with ICASA falsely alleging that AT&T was providing services outside the scope of its VANS licenses. AT&T rejects these allegations. Although ICASA has not ruled on Telkom's complaint, Telkom has once again ceased providing new telecommunications facilities to AT&T.

VANS Ownership Limitation: ICASA has proposed a regulation requiring that no less than 15 percent of the ownership and control of a VANS license should be held by historically disadvantaged persons. (*See Notice of Intention to Make Regulations in terms of Section 96 Read with Section 52(1) of the Telecommunications Act 103 of 1996 relating to Ownership and Control of Value-Added Network Services*, Notice 4041 of 2000, Government Gazette No. 21642, Oct. 11, 2000.) This regulation, if adopted, would have serious ramifications for AT&T and other companies that are currently providing or would like to provide VANS services in South Africa.

Such a regulation would clearly violate South Africa's WTO commitments to provide market access and national treatment to foreign VANS suppliers. GATS Article 16 prohibits Members from maintaining an unscheduled limitation on the participation of foreign capital. GATS Article 17 requires Members to provide no less favorable treatment to services and service suppliers of other Members. By setting aside 15 percent of VANS companies to be held only by South Africans who were historically disadvantaged, South Africa is limiting foreign ownership to 85 percent, but yet has scheduled no such limitation in its GATS commitments.

In addition to harming existing investors in South Africa and violating South Africa's WTO commitments, the draft regulation would have a chilling effect on foreign direct investment in South Africa. Prospective investors would face the very real possibility that the South African government could take regulatory action to appropriate their investments after the fact and apparently without compensation.

III. PERU

AT&T also requests USTR to continue its efforts to ensure that Peru provides cost-oriented and non-discriminatory interconnection. AT&T'S affiliate, AT&T Latin America, has entered Peru's newly opened telecommunications market and, like all new entrants in that market, must interconnect with the former monopolist, Telefonica del Peru ("Telefonica"), which dominates virtually every major sector of Peru's telecommunications market, including the cellular sector, in which it has a nationwide market share of over 70 percent.

Following concerns regarding the high level of interconnection rates in Peru raised in the 2000 Section 1377 telecommunications review, USTR stated on April 4, 2000 that it would review Peru's implementation of its WTO commitments, particularly regarding interconnection. Ambassador Barshefsky stated: "I welcome Osiptel's action to review the complaints of new entrants regarding interconnection rates, and I urge that it set rates for all services at levels that are comparable, cost-oriented, reasonable and non-discriminatory." Osiptel, Peru's telecommunications regulator, had stated that it would shortly take steps to resolve interconnection disputes between Telefonica and new entrants.

On October 2, 2000, USTR announced that it would continue to review Peru's implementation of its WTO commitments, "particularly with respect to ensuring further progress on cost-oriented and non-discriminatory interconnection." USTR noted that Osiptel had in August approved local interconnection rates of 1.68 cents per minute, scheduled to fall to .96 cents by 2002, but had "failed to apply these rates to commercially more relevant market segments - long-distance and wirelesss interconnection." Ambassador Barshefsky stated that "we remain seriously concerned that these rate reductions do not apply to more commercially relevant market segments. The current rate of 2.9 cents a minute for these segments contrasts sharply with interconnection rates in competitive markets in the Americas, where rates at or below one cent a minute are common."

Subsequently, on November 30, 2000, Osiptel issued regulations lowering interconnection rates to become effective on January 1, 2001. Rates for the interconnection of long-distance calls were set at the same levels as local interconnection rates, and the fixed-mobile interconnection rate was capped at $0.186 per minute. However, Osiptel delayed the effective date of the new fixed-mobile interconnection rate until March 1, 2001.

Continued USTR involvement therefore remains necessary to ensure that Telefonica, as Peru's major supplier, is required to provide "rates for all services at levels that are comparable, cost-oriented, reasonable and non-discriminatory," as stated by Ambassador Barshefsky following last year's Section 1377 review, and that those rates are implemented on a timely basis. The rate for inbound international calls terminating on Telefonica's cellular network, which Telefonica is seeking to establish at $0.28 for U.S. carriers, should also comply with these principles.

* * * *

AT&T would be pleased to provide any further information that would be helpful to the

Committee.

Respectfully submitted,

Joanna McIntosh